

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE

Assigned on Briefs May 13, 2009

DECOLE T. HOLT v. STATE OF TENNESSEE

Appeal from the Circuit Court for Wayne County
No. 14184 Jim T. Hamilton, Judge

No. M2008-00813-CCA-R3-HC - Filed June 16, 2009

The Petitioner, Decole T. Holt, appeals the summary dismissal of his petition for habeas corpus relief. The habeas corpus court determined that his term of imprisonment on the challenged judgments for two counts of cocaine possession over twenty-six grams had expired. The Petitioner argues that the dismissal is erroneous because the nine-year sentence imposed for these convictions is used to “shift the starting date” of the eighteen-year sentence (consecutive to the challenged judgments) he is currently serving. Following our review, we affirm the order of the Wayne County Circuit Court dismissing the petition.

Tenn. R. App. P. 3 Appeal as of Right; Judgment of the Circuit Court Affirmed

DAVID H. WELLES, J., delivered the opinion of the court, in which ALAN E. GLENN and ROBERT W. WEDEMEYER, JJ., joined.

William J. Eledge, Lawrenceburg, Tennessee, for the appellant, Decole T. Holt.

Robert E. Cooper, Jr., Attorney General and Reporter; Cameron L. Hyder, Assistant Attorney General; Mike Bottoms, District Attorney General; and Doug Dicus, Assistant District Attorney General, for the appellee, State of Tennessee.

OPINION

Factual Background

We glean the following information from the judgment forms attached to the Petitioner’s habeas corpus petition. On March 31, 1997, in the Davidson County Criminal Court, the Petitioner pleaded guilty in case numbers 96-B-844 and 97-I-178 to two counts of possession of over twenty-six grams of cocaine, Class B felonies. See Tenn. Code Ann. § 39-17-417. The offense date in case number 96-B-844 is March 2, 1996, and the offense date in case number 97-I-178 is July 13, 1996. He was sentenced for these convictions on July 25, 1997, the trial court ordering nine-year concurrent sentences, as a Range I, standard offender. He was placed in the Community Corrections

Program. Following a violation, the Petitioner's community corrections sentence was revoked on October 2, 1998. He was ordered to serve his effective nine-year sentence in the Department of Correction and given jail credit for March 3, 1996; March 31, 1997, through May 29, 1998; June 12, 1998, through June 16, 1998; and August 24, 1998, through October 2, 1998.

The Petitioner filed a petition for a writ of habeas corpus on March 9, 2007. As grounds for relief, the Petitioner, citing to Tennessee Code Annotated section 40-20-111(b) and Tennessee Rule of Criminal Procedure 32(c)(3)(C), alleged that "the trial court lacked jurisdiction to enter concurrent sentencing for a pre-bail and post-bail offense in the guilty plea proceedings." The Petitioner is currently incarcerated on a subsequent unrelated eighteen-year sentence, which was ordered to be served consecutively to the two challenged drug convictions.

The State filed a motion for summary dismissal of the petition on the basis that the Petitioner was no longer imprisoned or restrained of his liberty pursuant to the challenged judgments. At the motion hearing, the Petitioner argued that he was restrained of his liberty under the challenged judgments because the nine-year sentence shifted the starting date of service of his current eighteen-year sentence. The habeas corpus court granted the State's motion and dismissed the petition by order filed on March 28, 2008.

It is from the order of summary dismissal that the Petitioner appeals. The Petitioner again argues that, even though his effective nine-year sentence has been fully served, there is still a collateral consequence from these convictions, shifting the starting date of his current eighteen-year sentence, and he is presently incarcerated.

Analysis

Initially, we note that the determination of whether to grant habeas corpus relief is a question of law. McLaney v. Bell, 59 S.W.3d 90, 92 (Tenn. 2001), overruled in part on other grounds by State v. Summers, 212 S.W.3d 251, 262 (Tenn. 2007). The Tennessee Constitution guarantees a convicted criminal defendant the right to seek habeas corpus relief. See Tenn. Const. art. I, § 15. However, the grounds upon which our law allows relief are very narrow. Taylor v. State, 995 S.W.2d 78, 83 (Tenn. 1999). Habeas corpus relief is available in Tennessee only when it appears upon the face of the judgment or the record of the proceedings upon which the judgment is rendered that (1) the convicting court was without jurisdiction or authority to sentence the defendant or (2) the defendant's sentence has expired. Archer v. State, 851 S.W.2d 157, 164 (Tenn. 1993). It is permissible for a trial court to summarily dismiss a petition for habeas corpus relief, without the appointment of counsel and without an evidentiary hearing, if there is nothing on the face of the judgment or the record of the proceedings to indicate that the convictions addressed therein are void. Passarella v. State, 891 S.W.2d 619 (Tenn. Crim. App. 1994).

A sentence imposed in direct contravention of a statute is illegal and thus void. Stephenson v. Carlton, 28 S.W.3d 910, 911 (Tenn. 2000). On the other hand, a voidable judgment or sentence is one which is facially valid and which requires evidence beyond the face of the judgment or the record of the proceedings to establish its invalidity. Taylor, 995 S.W.2d at 83. A petitioner bears

the burden of establishing a void judgment or illegal confinement by a preponderance of the evidence. Wyatt v. State, 24 S.W.3d 319, 322 (Tenn. 2000).

Tennessee Code Annotated section 29-21-101 provides that “[a]ny person imprisoned or restrained of liberty, under any pretense whatsoever, . . . may prosecute a writ of habeas corpus, to inquire into the cause of such imprisonment and restraint.” Tenn. Code Ann. § 29-21-101. “The ordinary meaning of the term ‘imprisoned’ is clear[; it] refers to actual physical confinement or detention,” Hickman v. State, 153 S.W.3d 16, 22 (Tenn. 2004), but the meaning of “restrained of liberty” for habeas corpus purposes is less obvious.

Although one need not be in physical confinement to be restrained of one’s liberty for purposes of habeas corpus, id., “when the restraint on a petitioner’s liberty is merely a collateral consequence of the challenged judgment, habeas corpus is not an appropriate avenue for seeking relief,” id. at 23. In Hickman, our supreme court held

that a person is not “restrained of liberty” for purposes of the habeas corpus statute unless the challenged judgment itself imposes a restraint upon the petitioner’s freedom of action or movement. Use of the challenged judgment to enhance the sentence imposed on a separate conviction is not a restraint of liberty sufficient to permit a habeas corpus challenge to the original conviction long after the sentence on the original conviction has expired.

Id.

We conclude that the Petitioner is neither imprisoned nor restrained of his liberty as a direct consequence of the challenged judgments. The Petitioner does not allege that he remains imprisoned or is restrained of his liberty pursuant to the challenged judgments; rather, it appears the direct cause of the Petitioner’s restraint is an eighteen-year sentence on an unrelated offense. The Petitioner seeks relief from the 1997 judgments as a means of reducing the sentence he is currently serving. In our view, the delay in the “starting date” of his present sentence is merely a collateral consequence of the challenged judgments. See, e.g., Jeff Haithcote v. State, No. M2007-01416-CCA-R3-HC, 2008 WL 5082900, at *2-3 (Tenn. Crim. App., Nashville, Nov. 19, 2008). Therefore, the habeas corpus court was correct in summarily dismissing the petition for habeas corpus relief.

Conclusion

Accordingly, we affirm the Wayne County Circuit Court’s summary dismissal of the petition for habeas corpus relief.

DAVID H. WELLES, JUDGE